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(57) Abstract

A simplified trade finance method particularly for international trade in goods or services, a "traded product", can employ one, and preferably two, novel, modified bills of exchange. A first bill of exchange (1 o E), which is a payment draft, is executed by a buyer (B), and returned to seller (S) prior to release of the traded product by seller (S). Seller (S) can obtain credit verification of the first bill of exchange (1 o E), if necessary, before releasing the traded product, protecting seller (S) from failure of buyer (B) to pay. The first bill of exchange (1 o E) can be dormant and non–negotiable until activated by an event agreeable to a buyer (B), for example, release of the traded product. Buyer (B) is thus protected against seller (S) delaying or failing to ship the traded product after having received a payment instrument from buyer (B). A pro–forma invoice (PFI) can be used to define the transaction details, and set forth agreement terms including the possibility of removing merchandise claims or disputes from the payment cycle for resolution in accordance with international convention or treaty e.g. the Vienna Convention on the International Sale of Goods. A second bill of exchange, mutually extinguishable with the first bill of exchange (1 o E) can be employed to facilitate provision of credit by the buyer's bank (BB), avoiding need to utilize seller's (S) credit resources.

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TRADE FINANCING METHOD, INSTRUMENTS AND SYSTEMS

BACKGROUND OF THE INVENTION

1. Field of the Invention

The present invention relates to a method of trade financing, which is particularly, but not exclusively, suitable for use in financing international trade between a buyer and a seller resident in different countries, and to computerized systems for implementing the method. The invention further relates to novel trade instruments, to a novel method of managing and monitoring an international trade transaction and can provide novel institutional relationships between commercial, financial, industrial and even government institutions, all of which are useful for enabling or facilitating domestic or international trade transactions.

2. Description of Related Art

There is often difficulty in obtaining efficient and timely execution of international trade transactions. One difficulty encountered in trading between many buyers and sellers, namely those lacking the advantages of a trusting relationship built from years of past experience with one another, is that the seller is at risk to the buyer's willingness and ability to pay. This problem is magnified in international trade by legal, jurisdictional, linguistic, cultural and other differences, particularly since by definition, international trade is trade between two separate and distinct legal jurisdictions, and often two separate and distinct legal traditions. Unlike a simple store purchase where release of the goods to a customer not previously known and trusted by the seller, is contingent upon receipt by the seller of payment, or of a highly credible credit card order for payment, in international trade, unless prepayment is received, (an implausible practice on most save the smallest transactions), the seller is necessarily exposed to unknown shortcomings in the buyer's integrity or resources, by the need to ship goods or, possibly, supply services, before payment is received. The goods or services supplied or goods and services supplied in a trade transaction are referenced herein as the "traded product".

Some desirable goals for an improved method of trade financing are as follows:

1. that the seller be fully reimbursed promptly after shipping or otherwise releasing the traded product;
2. that the seller not be exposed to possible unwillingness of the buyer to pay after such release of the traded product from the control of the seller;
3. that the seller receive a negotiable financial instrument enabling such prompt reimbursement which instrument is not subject to recourse by the buyer in the case of merchandise disputes;
4. that the financial instrument be one that lends itself to credit enhancement features providing improved assurance of the buyer's ability to pay; and

5. that permits creditworthy buyers time to pay.

Various methods are of course known to the art for financing international trade, and some of them, such as letters of credit, have been used for centuries.

A typical open receivable trade financing method is depicted in Figure 1 and commences, in step 1, with receipt by seller S of the buyer's purchase order specifying the goods to be shipped, the pricing, the method of carriage and so on. Then the seller ships the goods, step 2 and mails one or more invoices to buyer B, perhaps following up with a statement, to request payment from buyer B, step 3.

At some unknown subsequent time, buyer B then remits payment to seller S, step 4, unless in the interim buyer B has decided that he is unwilling to pay for the goods. Seller S is completely dependent upon buyer B's reputation for creditworthiness and is exposed to unwillingness of the buyer to pay, inability of the buyer to pay, untimeliness of payment, and to the possibility that buyer B may seek recourse for any one of a number of commercial complaints, for example, shortages, quality complaints, substitutions incorrect items and so on.

In some instances, seller S may be able to insure, or obtain an advance against a pool of their receivables. Insurance usually is effected by obtaining approval from an insuring entity prior to shipment of a pool of invoices addressed to a number of buyers. With the approval in hand the seller ships the goods and collects a discounted advance payment from the funding bank. At some point in the future when the receivables are collected the seller repays the advance to the funding bank. Liability for uncollected invoices is determined in the advance agreement as between the insuring entity and the seller.

A useful variation of accounts receiveable financing includes factoring. Referring to Figure 1B, in receivables factoring the seller assigns the invoice, passing title therein, to a factor, F1, step 5. At the same time seller S, notifies buyer B of the assignment and instructs buyer B to send his payment to factor F1. In step 6 factor F1 advances a partial payment on the invoice to seller S. In step 7, factor F1, standing in the place of seller S, collects the invoice receivable from buyer B. The balance less the factor's discount or commission is paid to seller S, in step 8.

Clearly, the advantage of factoring for seller S is in step 6 where seller S receives an advance on the invoice. The drawbacks are essentially the same as the drawbacks of open receivables financing. Additionally the seller runs the risk of having to return the advance to the factor in the event the invoice

becomes uncollectible.

Referring now to the letter of credit procedure shown schematically in Figure 2, the process commences with exporter seller S and importer buyer B agreeing upon a purchase that will be financed by a letter of credit, "L/C" in the drawing figure, step 1. Buyer B requests buyer B's local bank to initiate a letter of credit, step 2. Typically, as shown in step 3 the letter of credit is now forwarded to chain of banks, acting as agents in succession for bank F1. The chain can comprise, for example: F1's correspondent bank F2 in the importer' s country; F2's counterpart correspondent bank in the exporter's country F3; and F3's counterpart bank F4, local to exporter seller S. Bank F4 notifies seller S of the receipt of the letter of credit.

When so advised, seller S ships the goods to the order of bank F1, step 4. In step 5, seller S forwards the shipping documents to bank F4 and draws a draft on bank F1. Seller S then submits documents for negotiation to bank F4 who scrutinizes them for inconsistencies and inaccuracies, and for compliance with regulations such as UCP500.

It is in the nature of the letter of credit process, which is rife with administrative detail, that 80 percent of the time, bank F4 rejects the documents, usually for minor reasons, called discrepancies. The remaining 20 percent are accepted in the, step 6. In step 7 seller S resubmits corrected versions of any rejected draft and documents.

Once the documents are approved bank F4 pays the face value of the letter of credit, less charges, to seller S, step 8. Bank F4 releases the documents to bank F1 than, step 9 and receives reimbursement, step 10. Bank F1, in turn, and releases the documents to buyer B, and obtains payment, step 11, enabling buyer B to obtain the goods, and clear them through customs.

The letter of credit process provides a high degree of security for seller S who is essentially only at risk to the banking system. The problems with a letter of credit are its complexity leading to errors and inconveniences, and the fact that it is singularly unattractive to many buyers. In many cases buyer B will have to deposit cash or cash-equivalent collateral with bank F1 to obtain issuance of a letter of credit, meaning that buyer B effectively funds the transaction for a significant period of time to receipt of the goods. Where the transaction has significant value the requirement for letter of credit collateral may be a significant constraint on buyer B's liquidity. Rather than receiving time to pay, buyer B effectively has to pay in advance. The letter of credit process is complex, time-consuming, error-prone and subject to delays, and expensive particularly for smaller transactions.

The forfaiting process illustrated in Figure 3, as an example of forfaiting, takes place between an exporter-seller S, an importer-buyer B, a forfait house FH, an avalizor A, an optional holder in due course H and the buyer's bank BB. Forfaiting is usually for a multi-year term. Thus, in step 1 seller S and buyer B agree, on a multi-year purchase agreement. Typically, the agreement will provide for quarterly or semi-annual payments, to be effected by avalized drafts which the seller can cash at forfait house FH.

In step 2, forfait house FH calculates the individual amounts of the payments making allowance for interest, and fees applicable to the at risk party or parties, namely forfait house FH and avalizor A.

In step 3, seller S draws a series of stand-alone drafts, each for a fixed amount as calculated by finance house FH in step 2, and forwards the drafts to buyer B for acceptance. The amounts may be equal amounts or may vary during the life of the agreement. The drafts are not partial payments but each represents the extent of the purchasing power extended to buyer B during the respective quarter or half-year period covered by the draft.

In step 4 buyer B accepts all the drafts in the series as individual stand-alone documents, without reference to the underlying transaction, and returns the accepted drafts to seller S..

In step 5 seller S has each draft avalized by avalizor A who endorses each with the phrase "por aval", thereby guaranteeing payment if buyer B defaults. Being now in possession of the avalized drafts which are negotiable with forfait house FH, seller S ships goods, step 6, as provided in the purchase program agreed in step 1.

In step 7, the complete series of avalized drafts is sold to forfait house FH at a discount. Optionally, step 8, forfait house FH may sell the avalized drafts to a holder in due course, in which case forfait house FH endorses the back of each draft to holder H.

In step 9, forfait house FH, or holder H, presents the avalized draft for payment, on the due date, to buyer's bank BB, and receives payment for all honored drafts. In step 10, forfait house FH, or holder H, presents each dishonored draft for payment to avalizor A under the aval.

In such a forfaiting process, seller S has little exposure being at risk only to recognized financial institutions that provide the functions of forfait house FH and avalizor A. Also, buyer B receives credit. However, the process is expensive requiring significant discounts to engage the participation of both

forfait house FH and avalizor A. Also, forfaiting is a long-term, complex process not suited to financing smaller, individual import-export transactions. Typically, forfaiting is used to finance multiple payments for long term large capital goods purchases to more closely match the payment cycle to the financial returns earned by the underlying capital equipment. It is typically applied to three to seven-year terms for transactions valued in the millions of dollars. As with a letter of credit, buyer B may have to furnish collateral to avalizor A, adversely affecting buyer B's liquidity. Furthermore, forfaiting is a specialist activity requiring forfait house FH and avalizor A to enter into a multi-year commitment to buy er B whose fortunes change over the years. Forfaiting is therefore not suitable for many buyers who may be quite creditworthy for the duration of a single transaction, but are not sufficiently established and durable to justify long-term confidence.

The patent literature contains some proposals for new financing or trading methods and systems. For example, Potter et al U.S. patent 5, 787,402 teaches a method for automating foreign currency transactions; Custy U.S. patent 5,774,879 teaches a method for automated financial instrument processing, and Harris et al. in U.S. patent 5,517,406 teaches a trade processing system for mutual fund transaction requests. None of these prior proposals is remotely relevant to applicant's objectives.

Tozzoli et al. in U.S. patent 5,717,989 teach a method of facilitating international trade in goods, which method avoids the use of a letter of credit, and the presentation and manual processing of documentation for compliance therewith. However, Tozzoli's lacks teaching regarding the use of a new payment instrument to finance international trade, and does not employ bills of exchange. Tozzoli's system addresses problems that arise from documentary discrepancies in trade transactions and seeks reduction of the delays and costs involved in financing trade by automated comparison of purchase order data, contract data and shipment data to generate payment due data (see claim 1). Tozzoli does not appear to provide any new trade financing method or instrument which helps solve the problem of financing a buyer while reducing the seller's exposure to risk after release of the product being traded.

United States patent No. 5,694,552 recently issued to Aharoni discloses a financing method and employing what is described as a new use of at least one trade acceptance draft. Aharoni's method is a buyer-oriented method which contemplates that buyer will pay for goods and/or services received from seller S with one or more buyout-executed in trade acceptance drafts. Subject to various conditions, these drafts are negotiated by seller S with a financial organization FO.

Referring to the block flow diagram of Figures 4A-4B, Aharoni's method commences in step 1 with seller S and financial organization FO concluding a draft acceptance agreement defining the terms

under which financial organization FO will purchase accepted drafts from seller S, see column 2, lines 40-55. The drafts are to be purchased after shipment of goods or delivery of services (only "goods" will be referenced hereinafter, it being understood that services and may be alternatively or additionally intended). The agreement is generic in that no specific buyer is contemplated. Thus, there can be no approval of a specific buyer's credit before the agreement is concluded.

In step 2, after soliciting a willing buyer B, Aharoni concludes a purchase agreement with the buyer B, called a "TAD Program Agreement", in which buyer B agrees to pay for the goods with one or more buyer-accepted trade drafts, see column 2, lines 59-64. Buyer B now sends seller S a purchase order, step 3, see column 3, lines 37-38 and column 4, lines 51-52. Because buyer B's credit has not yet been checked, seller S has to request pre-approval from financial organization FO of the proposed sale defined by the purchase order, step 4, see column 3, lines 39-42 and column 4, lines 53-54. If financial organization FO denies approval, the transaction is aborted, step 5, see column 3, lines 45-46.

In step 6, financial organization FO pre-approves the proposed transaction, see column 3, lines 43-45 and column 4, line 55, enabling seller S to ship the goods, step 7. In step 7, in addition to shipping the goods to buyer B, seller S also sends buyer B one or more trade acceptance drafts to be used for payment, see column 3, lines 47-53, and column 4, line 56. In step 8 if buyer B does not accept the goods or does not sign the draft or drafts, financing is aborted and seller S must have recourse to the purchase agreement to obtain payment directly from buyer B, see column 3, lines 57-61.

In step 9, buyer B accepts the goods and then subsequently confirms its acceptance by signing the drafts and returning them to seller S, see column 3, lines 54-55 and column 4, lines 57-58. Seller S endorses each draft on the back of the document and tenders it to financial organization FO for purchase, step 10, see column 3, lines 62-65 and column 4, line 60. Financial organization FO then checks buyer B's credit for changes since step 6, and if an adverse report is received, declines to purchase the drafts, step 11, see column 3, lines 66-67. Once again, in this eventuality, seller S must resort to direct dealings with an unwilling or unable buyer, in order to obtain payment.

In step 12, if a favorable report is received, financial organization FO pays seller S an advance on the draft or drafts, not the full value of the drafts see column 4, lines 1-5, and column 4, lines 61-64. Where seller S has gone to the expense of obtaining credit insurance, financial organization FO pays the balance to seller S, in step 13 see column 4, lines 5-8. Otherwise seller S must wait until financial organization FO requests payment from the buyer bank BB, step 14, see column 4, lines 9-12 and column 4, line 67 to column 5, line 3-58. and receives that payment before the balance is paid, step 15,

see column 4, line 17, and column 5, line 4. In step 16, if financial organization FO is not paid, seller S has to return the advance received in step 12, see column 4 lines 27-33.

The problem with Aharoni is that, after shipping the goods, seller S is repeatedly at risk to buyer B's unwillingness or inability to pay. Thus: in step 8, if buyer does not accept the goods or sign the drafts, finance is aborted; in step 11 if an adverse credit report is received, financial organization FO will not purchase the drafts; and in step 16, if financial organization FO cannot collect from buyer's bank, the advance must be returned. Accordingly, seller S may suffer the cost of returned goods, and a lost order, or the burden of an unfinanced transaction with a high probability of a delayed or incomplete payment.

There is thus a need for a new method of trade financing which provides for the seller to be fully reimbursed promptly after releasing or delivering the traded product, which avoids exposing the seller to unwillingness of the buyer to pay for the released product and which permits creditworthy buyers to have time to pay. There is also a need for new and simple financing instruments which can facilitate attainment of these desirable objectives, for computer implementable systems and methods for enhancing the trade financing process and for taking advantage of the benefits of Internet implementation.

BRIEF SUMMARY OF THE INVENTION

The present invention solves a problem. It solves the problem of providing a trade finance method wherein a seller receives a negotiable financial instrument in payment for a traded product, promptly after release of the traded product from the seller's control, allows the buyer time to pay and yet is not exposed to the possibility that the buyer becomes unwilling to pay after the traded product has been released from the seller's control. Preferred embodiments of the invention also solve, mitigate or help manage, problems that may arise from a willing buyer's inability to pay.

In one aspect, the invention solves this problem by providing a trade finance method for financing the sale of a traded product wherein, prior to supply of the traded product by the seller, the buyer provides to the seller or the seller's agent, a buyer-executed payment draft ordering payment, in the amount of the value of the traded product, to be made at a future date triggered by a future event. The future event is, for example an event related to release of the product from the seller's control, for example, the date of supply of the traded product. It could however be a buyer-related event, for example availability of certain funds to the buyer, perhaps the proceeds from an asset sale.

The payment draft is thus a prerelease payment draft, issued prior to release of the product by the seller